IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2341 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

REVASHANKER PANCHOLI PRAGATIGRUH THROUGH TRUSTEE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2341 of 2005

MR VH DESAI for Petitioner No. 1

MR DIPEN DESAI, AGP for Respondent No. 1-2

NOTICE SERVED BY DS for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 13/04/2005

ORAL JUDGEMENT

#. Rule. Mr.Dipen Desai, learned AGP, waives service of

rule on behalf of the respondents.

#. With the consent of the learned advocates for the respective parties, the matter is taken up for final hearing today.

#. In this petition filed under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Under Secretary, Education Department, State of Gujarat dated 1.2.2005 in taking over the management of the school by the State Government.

#. The petitioner trust was running the secondary school at Halvad and an order came to be passed on 7.7.2000 by the District Education Officer, Surendranagar taking over the management of the school from the petitioner. However, as the same was in breach of the principles of natural justice, the said order came to be set aside by the learned Single Judge of this Court (Coram: Jayant Patel,J) by judgment and order dated 28.3.2002 delivered in Special Civil Application No.8101 of 2000, however, with the clarification that it will be open to the competent authority to decide the matter regarding taking over the management of the school from the petitioner after giving opportunity of hearing to the petitioner. It was also made clear that if the hearing is given and the petitioner does not cooperate with the hearing or does not avail the opportunity of hearing, it will be open to the authority to pass appropriate order. Thereafter, the petitioner came to be heard by the Commissioner, Mid-day Meal and Schools and on the basis of the report submitted by the Commissioner, Mid-day Meal and Schools, State of Gujarat, the Under Secretary, Education Department, State of Gujarat passed the impugned order dated 1.2.2005 and a fresh order came to be passed taking over the management of the school from the petitioner trust. It is this order which is challenged by the petitioner in this petition under Article 226 of the Constitution of India.

#. Ms.Sutaria, learned advocate appearing for the petitioner, has vehemently submitted that even the impugned order dated 1.2.2005 is also in breach of the principles of natural justice inasmuch as the petitioner came to be heard by the Commissioner, Mid-day Meal and Schools, State of Gujarat and the impugned order has been passed by the Under Secretary, Education Department, State of Gujarat who has not heard the petitioner and that while passing the impugned order dated 1.2.2005, the Under Secretary has relied upon the report of the

Commissioner, Mid-day Meal and Schools dated 13.12.2004 and copy of which has not been given to the petitioner to meet with and to controvert the same. Under the circumstances, it is requested to allow the present petition.

#. In response to the notice issued by this Court, Mr.Desai, learned AGP, appears on behalf of the respondents. It is submitted that, in fact, there is no report by the Commissioner, Mid-day Meal and Schools and what is considered by the Under Secretary while passing the impugned order is the submissions recorded by the Commissioner while hearing the petitioner and, therefore, it cannot be termed as report, and, therefore, the same is not required to be given to the petitioner. However, he has fairly conceded that there was no hearing by the Under Secretary, Education Department who has passed the impugned order. It is further submitted that, in fact, the impugned order dated 1.2.2005 is already implemented and the Administrator is already appointed and the management is with the State Government.

#. Heard the learned advocates for the parties.

#. It is an admitted position now that the petitioner trust was not given opportunity of being heard by the Under Secretary, Education Department, State of Gujarat who has passed the impugned order dated 1.2.2005. Under the circumstances, the impugned order dated 1.2.2005 is in breach of the principles of natural justice which is required to be quashed and set aside and is accordingly quashed and set aside. The matter is remanded to the Under Secretary, Education Department, State of Gujarat for taking appropriate decision afresh in accordance with law and on merits after hearing the petitioner. Such exercise is required to be done by the Under Secretary as early as possible, preferably within a period of six weeks from the date of receipt of the writ of this order. However, it is made clear that while quashing and setting aside the impugned order dated 1.2.2005 and on remanding the matter to the Under Secretary, the management of the school which is already taken over by the Government will be continued with the State Government till appropriate decision is taken by the Under Secretary and necessary effect will be given to the order that may be passed by the Under Secretary, Education Department, State of Gujarat which is to be passed on remand by this Court. It is also made clear that the Under Secretary, Education Department on remand is required to pass the order afresh in accordance with law and on merits in any way being influenced by his earlier order dated 1.2.2005.

#. For the reasons stated above, this petition is partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.

(M.R.Shah,J)

(pathan)